

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

MISC. CIVIL APPLN.(CONTEMPT PETITION) No 702 of 1989

in

SPECIAL CIVIL APPLICATION No 3473 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

ZEHRABEN T CYCLEWALA

Versus

SAIF CO OP THRIFT CREDIT AND SUPPLY SOCIETY

Appearance:

MR MR ANAND for Petitioner
MR SHIRISH JOSHI for Respondent No. 1
UNSERVED for Respondent No. 2
MRS KETTY A MEHTA for Respondent No. 3
SERVED for Respondent No. 4,15,16,17,18

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE R.R.JAIN

Date of decision: 05/05/97

ORAL JUDGEMENT

Original petitioner of Spl.Civil Application no.3473/89 has filed this application under Contempt of Court Act for taking necessary action against respondents nos.1 to 18 for having defied the interim order passed by this Court in said Spl.Civil Application.

Said Spl.Civil Application was filed against the judgment and order passed by the Gujarat State Cooperative Tribunal in Revision Application no.76/89 on 9th May, 1989. The Revision Application before the Cooperative Tribunal was against the judgment and order passed by the Board of Nominee below Exh.5 in Lavad Case no.292/89. The Board of Nominee had granted stay preventing respondents nos. 1 and 2 from interfering with acting of petitioner as Manager in the said Society. Against the said order of Board of Nominee, respondent no.1-Society had preferred a Revision Application and the same came to be allowed. However, the operation of the said order of the Cooperative Tribunal was stayed by the order of 10th May,1989 for two weeks. Against that order of the Cooperative Tribunal, Spl.Civil Application no.3473/89 was filed and the following interim order came to be passed:

" Rule returnable on 21st June, 1989. Mr. Joshi waives service of the Rule.

Interim relief in terms of para 17 on condition that the petitioner hands over the keys of the safe deposit vaults to the Custodian i.e. respondent no.1 but that act on her part will be absolutely without prejudice to all the contentions in these proceedings and the proceedings pending before the other authorities and Courts. At the stage of handing over the keys by the petitioner to the respondent no.1, a panchnama shall be drawn up of all the articles and records etc., in the safe deposit vault and the same shall be signed by the petitioner and respondent no.1 and one copy thereof shall remain with the petitioner and the other copy shall remain with respondent no.1. Direct service permitted for respondent no.1 and 2 only."

The interim order passed by this Court on 25th May,1989 was in operation. Thereafter erection of the respondent no.1-Society took place on 25th June,1989 and the elected body took over the management from the Custodian respondent no.3. Respondents nos.3 to 18 are joined in this petition after the said election i.e. of 25th June,1989. They were not party respondents in the

original Spl.Civil Application. Respondents nos.4 to 18 after taking over management on 25th June,1989 convened a meeting of the elected members of the Society and the first resolution they passed was suspending the petitioner from the post of Manager. Said resolution was passed in view of alleged disciplinary inquiry pending against her which was initiated by the respondent no.3-the Custodian. It will be relevant to state that when this Court passed interim order in Spl.Civil Application, the said departmental inquiry was already initiated and pending. Despite the stay of this Court, the Committee passed a resolution suspending the petitioner. The petitioner, therefore, filed the present application for taking necessary action under Contempt of Court Act initially against respondents nos.1 and 2 and then against all the respondents i.e. including respondents nos.3 to 18 who were joined later on for breach and/or defying the order of this Court. This is how the matter is pending before this Court.

This Court initially issued notice to the respondents and thereafter Rule came to be issued on 10th April, 1991. Respondents nos.1 and 2 are represented by learned Advocate Mr.Shirish Joshi. Respondents nos.3 to 18 are represented by learned Advocate Mrs. K.A. Mehta. On Rule being served, respondent no.2 has filed affidavit-in-reply on behalf of the respondents. Respondent no.3 and 13 have also filed their affidavit-in-reply separately. Against the said affidavit-in-reply, petitioner has filed rejoinder affidavit. Against the same a sur rejoinder is filed by respondent no.10. Petitioner has also filed another affidavit-in-rejoinder to the same.

Affidavit-in-reply filed by respondent no.2 on behalf of all the respondents specifically stated in para 10 as under:-

"10. It is submitted that the respondents have not committed any contempt of this Hon'ble Court's order. But without prejudice to the above, the respondents tender unconditional apology, with a prayer to dismiss the petition."

Respondents nos.2 and 3 in their separate affidavit-in-reply have tried to justify the action.

This Court has passed a specific order to the effect that the operation, execution and implementation of the judgment and order dated 9th May, 1989 passed by the Gujarat State Cooperative Tribunal, Ahmedabad in

Revision Application no.76/89 arising from the order dated 21st April, 1989 passed in Lavad Case no.292/89 below Exh.5 be and are hereby stayed. Condition imposed for grant of this relief is not relevant for our purpose to be referred to. Board of Nominee in its order dated 21st April,1989 has prevented respondents from obstructing or interfering in any manner working of petitioner as Manager or from taking over charge of Manager from the petitioner. Suspension of petitioner by resolution of 25th June, 1989 is alleged to be a resolution in breach and in defiance of this Court's order. Each of the respondents nos.2 to 18 thereafter has filed another affidavit whereby each one of them have tendered unconditional apology to this Hon'ble Court without entering into the merits of the case. In earlier affidavit-in-reply apology was tendered but it was a conditional one. There the respondents first tried to justify their act and then said that in case their defence is not accepted they tender their apology. We were not prepared to accept that apology, and therefore, learned Sr. Counsel Mrs. Mehta , it appears has prevailed upon the respondents and have tendered unconditional apology before this Court.

Sub-section (1) of Sec.12 of the Contempt of Court Act reads as under:

"12. Punishment for contempt of court.- (1)
Save as otherwise expressly provided in this Act, or in any other law, a contempt of court may be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both:

Provided that the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Explanation.-An apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide."

Proviso to sub-section (1) of Sec.12 empowers the Court to discharge the accused or remit the punishment that may be awarded on apology being made to the satisfaction of the Court. Explanation to sub-section (1) provides that an apology shall not be rejected merely on the ground that it is qualified or conditional if the accused makes it bona fide.

Respondents in the instant case have instead of

entering into the merits of the case tendered unconditional apology, no doubt, be it at a later stage.

Whether by a particular act a contempt is committed or not is a matter between the Court and the contemner. The petitioner is relieved of his duty after bringing to the notice of the Court the alleged breach or defiance of the order of the Court which according to the petitioner amounts to Contempt of Court. The petitioner no doubt is given hearing in the matter under the Contempt of Court Act but he/she is there only to assist the Court so far as the factual data is concerned. Whether the Court should punish the contemner or not is the domain of the Court. In the instant case, for all the time since the hearing of this application, practically all the respondents for number of times have remained present before the Court. No doubt they were not punctually present as the petitioner was. Petitioner has practically remained present for all the time except once when she was prevented by some sickness. Learned Advocate Mrs. Mehta states before the Court that by an order of 17th December, 1990 one Mr. Bhagubhai Patel was appointed as Administrator of respondent no.1-Society. He took over charge on 11th January, 1991. On his taking over charge he had revoked the order of suspension passed against the petitioner by order of 21st February, 1991. It is clear from this statement that respondents nos.2 to 18 are not in management of respondent no.1-Society since 11th January, 1991. Till date also they are not in power. On instructions from respondents nos.2 to 18 she states that respondents are not interested in management of respondent no.1-Society. Thus, grievance of the petitioner which was against the present respondents nos. 2 to 18 about harassment to her and all other allegations does not now exist and in view of the statement of the learned Advocate Mrs. Mehta that the respondents are now not interested in the management of this bank because the bank is charging interest and the same is contrary to the command of the Quran. Thus, when the respondents are not likely to be in management of the respondent no.1-Society and as they are out of the management, it will be too technical to consider the case of the breach for punishment under Section 12(1) of the Contempt of Court Act. Despite this when the respondents have tendered unconditional apology before this Court in the present facts situation and, in our opinion, it will be proper in the interest of all concerned to accept the same. We may hasten to make it clear that when there was an order of this Court not to disturb the petitioner in her functioning as Manager, passing an order of suspension immediately after taking over the management from the

Administrator cannot be appreciated and is required to be condemned. Even if they could have passed such an order in our opinion they should have sought necessary legal advice and obtained necessary permission of the Court for the same or they ought to have brought this fact to the notice of the Court on their own. Thus, we do not approve the act of the respondents immediately on taking over the management of the Society.

On the last adjourned date we had instructed all the respondents to remain present before the Court with a clear understanding that in case any one of them is absent we may not hear the application and the application will be adjourned. Despite this, three of the respondents are absent. Respondent no.17 was granted exemption from remaining present today. Respondent no.16 Mr. Asgarbhai Wadiwala has prayed for exemption in view of his sickness and he is being admitted in the hospital. He has produced necessary photographs and certificate for the same. We grant him exemption from remaining present before this Court. So far as the case of respondent no.4 and 14 is concerned, it is stated by learned Counsel Mrs. Mehta upon instructions from respondent no.15 Ibrahim K. Bastawala that their tickets were purchased in the morning. They were to come with them. However, for some unknown reason they were not able to come today. She therefore prays for exemption on their behalf. We are satisfied that they had made an attempt atleast by purchasing a ticket for Ahmedabad to come to Ahmedabad but for unknown reason they are not able to reach Ahmedabad. It will be improper on our part to condemn their absence without hearing them. However, in the interest of all concerned, we grant exemption to them from remaining present before the Court. However, we think that as they have failed to communicate this Court the reason for their absence, if we impose some cost the purpose will be served. As we accept the unconditional apology tendered by the respondents, we drop the contempt proceedings. Rule is discharged. However, the petitioner shall be paid cost by respondents nos.4 and 14 to be quantified at Rs.1000/-(One thousand) each. The cost to be paid to the petitioner within two weeks from today.

It is stated by the learned Counsel Mrs. Mehta and agreed to by the learned Advocate Mr. Anand that the cost is paid.

sf-sms

